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A Rare Opportunity on Criminal Justice

By THE EDITORIAL BOARD MARCH 15, 2014

The current Congress is the place where virtually all legislation, however urgent or reasonable, goes to die. Yet out of this stew of partisan mistrust and dysfunction there may come one promising and unexpected achievement: the first major reforms to America's broken criminal justice system in a generation.

Two bipartisan bills now under consideration aim to unwind our decades-long mass incarceration binge and to keep it from happening again. This fact is remarkable not only because of Congress's stubborn standstill, but because crime and punishment has long been one of the most combustible issues in American politics.

And yet the depth of the crisis in the federal system alone has been clear for years. Harsh mandatory minimum sentencing laws have overstuffed prisons with tens of thousands of low-level, nonviolent drug offenders serving excessively long sentences. Federal prisons now hold more than 215,000 inmates, almost half of whom are in for drug crimes. Many come out more likely to reoffend than they were when they went in, because of the lack of any meaningful rehabilitation programs inside prison and the formidable obstacles to employment, housing and drug treatment that they face upon release.

The proposed legislation would address both the front and back ends of this problem.

The Smarter Sentencing Act — introduced in the Senate last year by Richard Durbin, the Illinois Democrat, and Mike Lee, the Utah Republican — would halve mandatory minimum sentences for certain nonviolent drug crimes, which currently stand at five, 10 and 20 years. It would also give judges more discretion to sentence below the mandatory minimum in some cases, and it would provide a

chance at early release for thousands of inmates sentenced under an older law that disproportionately punished crack cocaine offenders.

The Recidivism Reduction and Public Safety Act, introduced by Sheldon Whitehouse, Democrat of Rhode Island, and John Cornyn, the Texas Republican, would allow low-risk prisoners to earn credit for early release by participating in education, job training and drug treatment programs.

Reforms like these were unthinkable even a few years ago, when the Republicans' longtime tough-on-crime dogma — echoed by Democrats who fearfully fell into line — drove irrational sentencing laws. Why have things changed so quickly? In a word, money — or the lack of it. The bloated Bureau of Prisons eats up nearly $7 billion a year, a quarter of the Justice Department's entire budget. Politicians like Senator Rand Paul, Republican of Kentucky, and Mr. Lee have become the public face of the conservative turnabout, and they deserve credit for their efforts, but it's important to remember that almost none of this would be happening without the need to save money.

In fact, many of the reforms now under consideration at the federal level began in reliably conservative states, where budget crises long ago demanded sweeping and lasting change. In Texas, which incarcerates more people than any other state, lawmakers have adopted alternatives to prison, such as drug courts and improved community supervision programs, that help keep people from reoffending. The result has been a steady decline in the prison population and the closing of three state prisons, even as crime rates go down. As Mr. Cornyn told The Times, "From Texas's perspective, the evidence is in."

Since 2000, 29 states have moved to cut back on mandatory sentences, particularly for low-level and nonviolent drug offenders, according to a new report by the Vera Institute of Justice.

Some prosecutors and politicians warn that all this reform comes at a serious risk to public safety, but the experience of multiple states shows otherwise. Reserving prison for the most violent offenders saves money, and antirecidivism programs targeted at low-risk inmates protect public safety.

Whether the concern is too much government, too little money, or the inherent unfairness of locking people up for years for no good reason, the energy from both the right and the left is converging, and the moment for meaningful reform has arrived.

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